

REFERENCE TITLE: **class 6 felonies; reclassification**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2581

Introduced by
Representatives Farnsworth, Barnes, Pearce: Allen J, Biggs, Boone

AN ACT

AMENDING SECTIONS 13-1208, 13-1602, 13-1604, 13-1802, 13-1805, 13-1806, 13-2208, 13-2704, 13-3002, 13-3305, 13-3610, 13-3611 AND 13-3709, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL CLASSIFICATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-1208, Arizona Revised Statutes, is amended to
3 read:

4 13-1208. Assault; vicious animals; classification; exception

5 A. A person who owns a dog ~~which~~ THAT the owner knows or has reason to
6 know has a propensity to attack, to cause injury or TO otherwise endanger the
7 safety of human beings without provocation or ~~which~~ THAT has been found to be
8 a vicious animal by a court of competent ~~authority, which~~ JURISDICTION AND
9 THAT bites, inflicts physical injury on or attacks a human being while at
10 large is guilty of a class ~~6-felony~~ 1 MISDEMEANOR.

11 B. A person who owns a dog ~~which~~ THAT the owner knows or has reason to
12 know ~~that the dog~~ has a propensity to attack, to cause injury or TO otherwise
13 endanger the safety of human beings without provocation or ~~which~~ THAT has
14 been found to be a vicious animal and who keeps the dog or vicious animal in
15 an enclosed area or yard outside of a residence or structure on the property
16 shall post a notice indicating the presence of the dog or vicious animal.

17 C. ~~The provisions of~~ This section ~~shall~~ DOES not apply to dogs THAT
18 ARE owned or used by a law enforcement agency and ~~which~~ THAT are used in the
19 performance of police work.

20 Sec. 2. Section 13-1602, Arizona Revised Statutes, is amended to read:

21 13-1602. Criminal damage; classification

22 A. A person commits criminal damage by recklessly:

23 1. Defacing or damaging property of another person; ~~or~~.

24 2. Tampering with property of another person so as substantially to
25 impair its function or value; ~~or~~.

26 3. Tampering with the property of a utility.

27 4. Parking any vehicle in such a manner as to deprive livestock of
28 access to the only reasonably available water.

29 5. Drawing or inscribing a message, slogan, sign or symbol that is
30 made on any public or private building, structure or surface, except the
31 ground, and that is made without permission of the owner.

32 B. Criminal damage is punished as follows:

33 1. Criminal damage is a class 4 felony if the person recklessly
34 damages property of another in an amount of ten thousand dollars or more, or
35 if the person recklessly causes impairment of the functioning of any utility.

36 2. Criminal damage is a class 5 felony if the person recklessly
37 damages property of another in an amount of two thousand dollars or more but
38 less than ten thousand dollars.

39 3. Criminal damage is a class 6 felony if the person recklessly
40 damages property of another in an amount of ONE THOUSAND DOLLARS OR more ~~than~~
41 ~~two hundred fifty dollars~~ but less than two thousand dollars.

42 4. In all other cases criminal damage is a class ~~2-~~ 1 misdemeanor.

1 Sec. 3. Section 13-1604, Arizona Revised Statutes, is amended to read:
2 13-1604. Aggravated criminal damage: classification

3 A. A person commits aggravated criminal damage by intentionally or
4 recklessly without the express permission of the owner:

5 1. Defacing, damaging or in any way changing the appearance of any
6 building, structure, personal property or place used for worship or any
7 religious purpose.

8 2. Defacing or damaging any building, structure or place used as a
9 school or as an educational facility.

10 3. Defacing, damaging or tampering with any cemetery, mortuary or
11 personal property of the cemetery or mortuary or other facility used for the
12 purpose of burial or memorializing the dead.

13 B. Aggravated criminal damage is punishable as follows:

14 1. Aggravated criminal damage is a class 4 felony if the person
15 intentionally or recklessly does any act described in subsection A ~~which~~ THAT
16 causes damage to the property of another in an amount of ten thousand dollars
17 or more.

18 2. Aggravated criminal damage is a class 5 felony if the person
19 intentionally or recklessly damages property of another in an amount of ~~one~~
20 TWO thousand five hundred dollars or more but less than ten thousand dollars.

21 3. In all other cases aggravated criminal damage is a class 6 felony.

22 C. In determining the amount of damage to property, damages include
23 the cost of repair or replacement of the property that was damaged.

24 Sec. 4. Section 13-1802, Arizona Revised Statutes, is amended to read:
25 13-1802. Theft: classification

26 A. A person commits theft if, without lawful authority, the person
27 knowingly:

28 1. Controls property of another with the intent to deprive the other
29 person of such property; or

30 2. Converts for an unauthorized term or use services or property of
31 another entrusted to the defendant or placed in the defendant's possession
32 for a limited, authorized term or use; or

33 3. Obtains services or property of another by means of any material
34 misrepresentation with intent to deprive the other person of such property or
35 services; or

36 4. Comes into control of lost, mislaid or misdelivered property of
37 another under circumstances providing means of inquiry as to the true owner
38 and appropriates such property to the person's own or another's use without
39 reasonable efforts to notify the true owner; or

40 5. Controls property of another knowing or having reason to know that
41 the property was stolen; or

42 6. Obtains services known to the defendant to be available only for
43 compensation without paying or an agreement to pay the compensation or
44 diverts another's services to the person's own or another's benefit without
45 authority to do so.

1 B. A person commits theft if the person knowingly takes control,
 2 title, use or management of an incapacitated or vulnerable adult's assets or
 3 property through intimidation or deception, as defined in section 46-456,
 4 while acting in a position of trust and confidence and with the intent to
 5 deprive the incapacitated or vulnerable adult of the asset or property.

6 C. The inferences set forth in section 13-2305 apply to any
 7 prosecution under subsection A, paragraph 5 of this section.

8 D. At the conclusion of any grand jury proceeding, hearing or trial,
 9 the court shall preserve any trade secret that is admitted in evidence or any
 10 portion of a transcript that contains information relating to the trade
 11 secret pursuant to section 44-405.

12 E. Theft of property or services with a value of twenty-five thousand
 13 dollars or more is a class 2 felony. Theft of property or services with a
 14 value of ~~three~~ FOUR thousand dollars or more but less than twenty-five
 15 thousand dollars is a class 3 felony. Theft of property or services with a
 16 value of ~~two~~ THREE thousand dollars or more but less than ~~three~~ FOUR thousand
 17 dollars is a class 4 felony. Theft of property or services with a value of
 18 ~~one~~ TWO thousand dollars or more but less than ~~two~~ THREE thousand dollars is
 19 a class 5 felony. Theft of property or services with a value of ~~two-hundred~~
 20 ~~fifty~~ ONE THOUSAND dollars or more but less than ~~one~~ TWO thousand dollars is
 21 a class 6 felony. Theft of any property or services valued at less than ~~two~~
 22 ~~hundred-fifty~~ ONE THOUSAND dollars is a class 1 misdemeanor, unless ~~such~~ THE
 23 property is taken from the person of another, ~~or~~ is a firearm or is a dog
 24 taken for the purpose of dog fighting in violation of section 13-2910.01, in
 25 which case the theft is a class 6 felony.

26 F. A person who is convicted of a violation of subsection A, paragraph
 27 1 or 3 of this section that involved property with a value of one hundred
 28 thousand dollars or more is not eligible for suspension of sentence,
 29 probation, pardon or release from confinement on any basis except pursuant to
 30 section 31-233, subsection A or B until the sentence imposed by the court has
 31 been served, the person is eligible for release pursuant to section
 32 41-1604.07 or the sentence is commuted.

33 Sec. 5. Section 13-1805, Arizona Revised Statutes, is amended to read:

34 13-1805. Shoplifting; detaining suspect; defense to wrongful
 35 detention; civil action by merchant; classification;
 36 public services in lieu of fines

37 A. A person commits shoplifting if, while in an establishment in which
 38 merchandise is displayed for sale, ~~such~~ THE person knowingly obtains such
 39 goods of another with the intent to deprive that person of such goods by:

40 1. Removing any of the goods from the immediate display or from any
 41 other place within the establishment without paying the purchase price; or

42 2. Charging the purchase price of the goods to a fictitious person or
 43 any person without that person's authority; or

1 3. Paying less than the purchase price of the goods by some trick or
2 artifice such as altering, removing, substituting or otherwise disfiguring
3 any label, price tag or marking; or

4 4. Transferring the goods from one container to another; or

5 5. Concealment.

6 B. Any person who knowingly conceals upon himself or another person
7 unpurchased merchandise of any mercantile establishment while within the
8 mercantile establishment ~~shall be~~ IS presumed to have the necessary culpable
9 mental state pursuant to subsection A of this section.

10 C. A merchant, or a merchant's agent or employee, with reasonable
11 cause, may detain on the premises in a reasonable manner and for a reasonable
12 time any person WHO IS suspected of shoplifting as ~~defined~~ PRESCRIBED in
13 subsection A of this section for questioning or summoning a law enforcement
14 officer.

15 D. Reasonable cause is a defense to a civil or criminal action against
16 a peace officer, a merchant or an agent or employee of ~~such~~ THE merchant for
17 false arrest, false or unlawful imprisonment or wrongful detention.

18 E. If a minor engages in conduct ~~which~~ THAT violates subsection A of
19 this section notwithstanding the fact that ~~such~~ THE minor may not be held
20 responsible because of the person's minority, any merchant injured by the
21 shoplifting of ~~such~~ THE minor may bring a civil action against the parent or
22 legal guardian of ~~such~~ THE minor under either section 12-661 or 12-692.

23 F. Any merchant WHO IS injured by the shoplifting of an adult or
24 emancipated minor in violation of subsection A of this section may bring a
25 civil action against the adult or emancipated minor pursuant to section
26 12-691.

27 G. Shoplifting property with a value of ~~more than~~ two thousand dollars
28 OR MORE or shoplifting property during any continuing criminal episode
29 regardless of the value of the goods is a class 5 felony. Shoplifting
30 property with a value of ONE THOUSAND DOLLARS OR more ~~than two hundred fifty~~
31 ~~dollars~~ but ~~not more~~ LESS than two thousand dollars is a class 6 felony.
32 Shoplifting property valued at ~~two hundred fifty~~ LESS THAN ONE THOUSAND
33 dollars ~~or less~~ is a class 1 misdemeanor, unless ~~such~~ THE property is a
34 firearm in which case the shoplifting is a class 6 felony. For the purposes
35 of this subsection, "continuing criminal episode" means theft committed from
36 at least three separate retail establishments within a period of three
37 consecutive days.

38 H. ~~The court may,~~ In imposing sentence ~~upon~~ ON a person WHO IS
39 convicted of violating this section, THE COURT MAY require any person to
40 perform public services designated by the court in addition to or in lieu of
41 any fine ~~which~~ THAT the court might impose.

42 I. A person who commits shoplifting and who has previously committed
43 or been convicted within the past five years of two or more offenses
44 involving burglary, shoplifting, robbery or theft or who in the course of
45 shoplifting entered the mercantile establishment with an artifice,

instrument, container, device or other article that was intended to facilitate shoplifting, is guilty of a class 4 felony.

Sec. 6. Section 13-1806, Arizona Revised Statutes, is amended to read:

13-1806. Unlawful failure to return rented or leased property; notice; classification

A. A person commits unlawful failure to return rented property if, without notice to and permission of the lessor of THE property, ~~such~~ THE person knowingly fails without good cause to return ~~such~~ THE property within seventy-two hours after the time provided for ~~such~~ return in the rental agreement.

B. If the property is not leased on a periodic tenancy basis, the person who rents out the property shall include the following information, clearly written as part of the terms of the rental agreement:

1. The date and time the property is required to be returned.

2. The maximum penalties if the property is not returned within seventy-two hours of the date and time listed in paragraph 1.

C. If the property is leased on a periodic tenancy basis without a fixed expiration or return date the lessor shall include within the lease clear written notice that the lessee is required to return the property within seventy-two hours from the date and time of the failure to pay any periodic lease payment required by the lease.

D. It is a defense to prosecution under this section that the defendant was physically incapacitated and unable to request or obtain permission of the lessor to retain the property or that the property itself was in such a condition, through no fault of the defendant, that it could not be returned to the lessor within such time.

E. Unlawful failure to return rented or leased property is a ~~class 6 felony unless the value of the property is under one hundred dollars in which case it is a~~ class 1 misdemeanor.

Sec. 7. Section 13-2208, Arizona Revised Statutes, is amended to read:

13-2208. Usury; classification

A. A person commits usury by knowingly engaging in or directly or indirectly providing financing for the business of making loans at a higher rate of interest or consideration than authorized by law.

B. Usury is a class ~~6 felony~~ 1 MISDEMEANOR.

Sec. 8. Section 13-2704, Arizona Revised Statutes, is amended to read:

13-2704. Unsworn falsification; classification

A. A person commits unsworn falsification by knowingly:

1. Making any statement ~~which~~ THAT he believes to be false, in regard to a material issue, to a public servant in connection with an application for any benefit, privilege or license.

2. Making any statement ~~which~~ THAT he believes to be false in regard to a material issue to a public servant in connection with any official proceeding as defined in section 13-2801.

1 B. Unsworn falsification pursuant to paragraph 1, subsection A, is a
2 class 2 misdemeanor. Unsworn falsification pursuant to subsection A,
3 paragraph 2 is a class ~~6-felony~~ 1 MISDEMEANOR.

4 Sec. 9. Section 13-3002, Arizona Revised Statutes, is amended to read:
5 13-3002. False or forged messages; classification

6 A. It is unlawful for a person:

7 1. Knowingly to send to any person by telegraph or telephone a false
8 or forged message, purporting to be from a telegraph or telephone office, or
9 from any other person.

10 2. Knowingly to deliver or cause to be delivered to any person a false
11 or forged message, falsely purporting to have been received by telegraph or
12 telephone.

13 3. To furnish or conspire to furnish, or cause to be furnished to an
14 agent, operator or employee, to be sent by telegraph or telephone, or to be
15 delivered, a message, knowing it is false or forged, with intent to deceive,
16 injure or defraud another.

17 B. A person who violates ~~any provision of~~ this section is guilty of a
18 class ~~6-felony~~ 1 MISDEMEANOR.

19 Sec. 10. Section 13-3305, Arizona Revised Statutes, is amended to
20 read:

21 13-3305. Betting and wagering; classification

22 A. Subject to the exceptions contained in section 5-112, no person may
23 engage for a fee, property, salary or reward in the business of accepting,
24 recording or registering any bet, purported bet, wager or purported wager or
25 engage for a fee, property, salary or reward in the business of selling
26 wagering pools or purported wagering pools with respect to the result or
27 purported result of any race, sporting event, contest or other game of skill
28 or chance or any other unknown or contingent future event or occurrence
29 whatsoever.

30 B. A person shall not directly or indirectly knowingly accept for a
31 fee, property, salary or reward anything of value from another to be
32 transmitted or delivered for wagering or betting on the results of a race,
33 sporting event, contest or other game of skill or chance or any other unknown
34 or contingent future event or occurrence whatsoever conducted within or
35 without this state or anything of value as reimbursement for the prior making
36 of such a wager or bet on behalf of another person.

37 C. A person who violates this section is guilty of a class ~~6-felony~~ 1
38 MISDEMEANOR.

39 Sec. 11. Section 13-3610, Arizona Revised Statutes, is amended to
40 read:

41 13-3610. Abandonment of spouse; classification

42 A married person, having sufficient ability to provide for his or her
43 spouse's support or who is able to earn the means of such spouse's support,
44 who knowingly abandons and leaves such spouse in a destitute condition, is
45 guilty of a class ~~6-felony~~ 1 MISDEMEANOR.

1 Sec. 12. Section 13-3611, Arizona Revised Statutes, is amended to
2 read:

3 13-3611. Refusal or neglect to provide for spouse;
4 classification

5 A married person, having sufficient ability to provide for his or her
6 spouse's support or who is able to earn the means of such spouse's support,
7 who knowingly fails or refuses to provide the spouse with necessary food,
8 clothing, shelter or medical attendance, unless by such spouse's misconduct
9 he or she was justified in so doing, is guilty of a class ~~6-felony~~ 1
10 MISDEMEANOR.

11 Sec. 13. Section 13-3709, Arizona Revised Statutes, is amended to
12 read:

13 13-3709. Obtaining cable television services fraudulently;
14 manufacturing, distributing and selling unauthorized
15 decoding devices; classification; definition

16 A. Any person who with the intent to defraud another of any part of
17 the lawful charge for services that are provided over or by a licensed cable
18 television system as defined in section 9-505, makes any unauthorized
19 connection, whether physically, electrically, acoustically, inductively or
20 otherwise, or attaches any unauthorized device or devices to any cable, wire,
21 microwave or other component of a licensed cable television system, to a
22 television set or to any other instrument that is authorized to be attached
23 to a cable television system is guilty of a class 2 misdemeanor.

24 B. Any person who manufactures, distributes, sells, rents, lends,
25 offers or advertises for sale, rental or use any device that the person
26 intends to be used by another person to obtain services that are provided
27 over or by a licensed cable television system without payment of the charge
28 for those services is guilty of a class ~~6-felony~~ 1 MISDEMEANOR.

29 C. For the purposes of subsection B of this section it is a rebuttable
30 presumption that the person intended that the device would be used by another
31 person to obtain services that are provided over or by a licensed cable
32 television system without payment of the charge for those services if, while
33 advertising, selling, renting or lending the device, the person states that
34 the device will enable the person who receives the device to obtain cable
35 television or other services without payment of the charge for those
36 services.

37 D. For the purposes of subsection B of this section, it is a separate
38 violation for each individual device that is manufactured, distributed, sold,
39 rented, lent, offered or advertised for sale, rental or use in violation of
40 subsection B of this section.

1 E. A person whose business or property is injured arising out of a
2 violation of this section may bring an action in superior court to recover
3 damages or for an injunction, or both. The successful party to the action
4 may recover reasonable attorney fees.

5 F. ~~As used in~~ FOR THE PURPOSES OF this section, "device" includes any
6 component or combination of components capable of converting a scrambled or
7 coded cable television signal to a signal usable on a standard television
8 receiver.